Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1599

DEBBIE L. SIMPSON and
CHARLES ALEXANDER,
Petitioners,

versus

STATE OF MISSISSIPPI,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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IN THE
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DEBBIE L. SIMPSON and
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STATE OF MISSISSIPPI,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSISSIPPI

Debbie L. Simpson and Charles Alexander petition for a Writ of Certiorari to review the judgment of the Supreme Court of Mississippi in this case.

OPINION BELOW

The opinion of the Supreme Court of Mississippi is reported at 366 So. 2d 1085 and is printed herein as Appendix A.

JURISDICTION

The judgment of the Supreme Court of Mississippi is printed herein as Appendix B and was entered on January 17, 1979 and the Petition for Rehearing to the Supreme Court of Mississippi was denied on February 7, 1979 and is printed herein as Appendix C. The petitioners, having exhausted their state court remedies, petition this Honorable Supreme Court of the United States under the jurisdiction of 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

The questions presented herein are whether the petitioners Fourth and Fourteenth Amendment Rights were violated and the fruits of the search wrongfully obtained in that:

1. A violation of the petitioners Fourth Amendment Rights occurred when police officers entered a residence and started searching before they possessed a warrant;

2. The petitioners Fourth and Fourteenth Amendment Rights were violated when the alleged warrant used to justify the search was never introduced into evidence at any stage of the proceedings;

3. The petitioners Fourth and Fourteenth Amendment Rights were violated when the alleged warrant,

according to the testimony of the police officer, did not contain any mention of the eventual fruits of the search.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment of the United States Constitution provides in the Section pertinent herein:

> "(N)or shall any state deprive any person of life, liberty, or property, without due process of law; . . ."

The twenty-third Section of the Mississippi Constitution provides:

> "The people shall be secure in their persons, houses and possessions, from unreasonable

seizure or search; and no warrant shall be issued without probable cause supported by oath or affirmation, specially designating the place to be searched and the person or thing to be seized."

The Fourteenth Section of the Mississippi Constitution provides:

"No person shall be deprived of life, liberty, or property except by due process of law."

STATEMENT OF THE CASE

This case involves several important aspects of the Fourth Amendment of the United States Constitution as applied to the factual situation contained herein. The petitioners were prejudiced by a violation of their rights under the Fourth and Fourteenth Amendments to the United States Constitution which resulted in evidence being presented which should have been suppressed.

The petitioners were arrested in Jackson County, Mississippi on January 28, 1977 and subsequently were indicted by the April, 1977 term of the Jackson County Grand Jury on two counts of distribution of a controlled substance. The indictments were subsequently merged at trial.

The petitioners filed motions to suppress any evidence purported to be introduced because of a defective search and the resulting violation of the petitioners Fourth Amendment protection. A hearing was held on the motions and after testimony and briefs were furnished, the trial judge overruled the motion, but reserved a final ruling.

The record shows a total absence at this hearing and at the trial itself of a search warrant being introduced to justify the search. Although the testimony states a warrant was the basis on which the search was founded and not one of the exceptions to the warrant requirement, no warrant was ever introduced.

From testimony at the hearing two other important Fourth Amendment issues were raised which the petitioners pursued as improper but were also condoned by the trial court when the motion was overruled.

It is uncontradicted that the drug agents entered the residence and began searching for a period of time before they possessed a search warrant to do so. Only after a period of time did other agents arrive to deliver the warrant. Despite their own testimony the agents persisted in saying "they executed" the warrant. This is in direct opposition to the fact that they did not possess and serve the warrant on the occupants, yet they rely on it to justify the search.

Upon the oral description of the missing warrant and its contents the officers also stated that while they searched for, found and confiscated a large amount of money, this was not one of the things listed to be seized.

While it is clear the seized money was used to implicate the petitioners as evidence of an alleged drug deal, parties other than the petitioners were alleged to have actually sold these drugs and collected this money. The money itself was found stuffed in a couch after a lengthy and meticulous search of the premises.

With this evidence, "buy money" given to parties other than the petitioners, the trial court found petitioners guilty of the charge and subsequently sentenced them to a twenty year term in the Mississippi State Penitentiary plus a fine of $10,000.00.

After all proper post trial motions were filed and overruled by the trial court, the petitioners appealed the conviction and sentence to the Honorable Supreme Court of Mississippi.

The Supreme Court of Mississippi held that the verdict and the sentence were proper and no error occurred at the trial as it affirmed the lower court's verdict and sentence.

Although the issues presented in this Petition for Certiorari were briefed and presented by the

Honorable Supreme Court of Mississippi, the petitioners would respectfully submit that these issues were not addressed in the opinion contained herein as Appendix A.

Upon filing of the petition for rehearing in the Supreme Court of Mississippi, the petitioners once again urged the court to speak to the issues not addressed in the opinion.

The petition for rehearing was denied as shown by Appendix C herein, therefore, the petitioners would show that they have been denied due process of law not only by the lack of suppression at the trial level but also at the appellate level when the Supreme Court of Mississippi declined to address the Constitutional issues properly submitted to it.

REASONS FOR GRANTING THE PETITION

I A violation of the petitioners Fourth Amendment Rights occurred when police officers entered a residence and started searching before they possessed a warrant.

It is clear and uncontradicted the agents entered the house without possessing a search warrant. The search began and subsequently other agents arrived with an alleged warrant that has yet to be presented.

As in the trial court and before the Supreme Court of Mississippi, the petitioners would show that this is a violation of the Fourth Amendment guarantee of protection against unreasonable search and seizure and any evidence gathered by it should have been suppressed.

Of course, warrantless searches are per se unreasonable unless justified under one of the exceptions to the warrant requirement. *Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).

While the petitioners in their brief to the Supreme Court of Mississippi, examined each exception to the warrant requirement to the facts, no such exception exists and none was even relied on by the agents at trial. Their testimony was that the basis for the search was the missing warrant.

In any event, should an exception be forwarded as the basis for the search, the rule of this Honorable Court and the Supreme Court of Mississippi is the state must bear the burden of proving any alleged waiver beyond a reasonable doubt. *United States v. Jeffers*, 342 U.S. 48, 72 S. Ct. 93, 96 L. Ed. 2d 59 (1952); *Luton v. Mississippi*, 287 So. 2d 269 (1973).

Testimony repeatedly reveals the entry and search were made without a warrant being served on the occupants. This is not disguised or colored by the agents at all but the brazen attitude of their actions and

testimony shows why the exclusionary rule is so proper and necessary to deter police misconduct. *Davis v. Mississippi*, 394 U.S. 721, 89 S. Ct. 1394, 22 L. Ed. 2d 671 (1969).

A judicial sanction of this type of behavior will lead to a new era of fishing expeditions where any violation can be justified by a post search acquisition of a warrant. Thus the old self-justifying search once again rears its dangerous shadow. *Ker v. California*, 374 U.S. 23, 83 S. Ct. 1623, 10 L. Ed. 2d 727 (1963).

The aspects argued here are all the more important when the full text of the record reveals the time factor present. There was no need for immediate action in this cause and this is clear by both the testimony and the leisurely pace with which the agents proceeded.

Although the trial judge overruled the motion to suppress, he was, nevertheless, convinced the procedure was error and stated this into the record. The question, however, is does the error arise to Constitutional stature and therefore mandate reversal? The rule is, of course, that Constitutional provisions against unreasonable search and seizure should be construed to be most liberally against the state. *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971); *Meyer v. Mississippi*, 309 So. 2d 161 (1975).

2. **The petitioners Fourth and Fourteenth Amendment Rights were violated when the alleged warrant used to justify the search was never introduced at any stage of the proceedings.**

The total absence of an alleged warrant in the entirety of the proceedings is startling in its effect. While the agents relied on a warrant to justify the search and seizure it was never introduced for judicial scrutiny in spite of the fact the proper motions were filed and a hearing was held.

No exception to the warrant requirement was relied on but a warrant yet to ever be introduced was. For all the record reveals, it does not even exist. Since the warrant was not possessed by the officers who searched the house and was never introduced, how could a search upon its strength be upheld?

While the state law of Mississippi holds that a warrant's admission to the jury is improper, this does not excuse its absence from the court's consideration when a proper challenge is made as is the case here. *Sisk v. Mississippi*, 290 So. 2d 608 (1974).

In *Sisk* the holding was that if the validity of a search warrant is challenged the affidavit and the search warrant must be produced and made a part of the record although the warrant and affidavit should not be allowed to go to the jury because their contents may

and probably do contain hearsay. The proper procedure, however, is for the court to examine it.

The court heard testimony about the alleged warrant yet it was never introduced. The petitioners, therefore, would show this was improper and the evidence obtained therefrom should have been suppressed.

3. **The petitioners Fourth and Fourteenth Amendment Rights were violated when the alleged warrant, according to the testimony of the officers, did not contain any mention of the fruits of the search.**

The alleged warrant was never introduced at any of the proceedings, therefore, any information about its contents must be derived from the testimony of the agents who rely on it.

Although it may seem the petitioners are in a conflicting position in this argument, it is not the case. Petitioners were proper in their challenge and this proposition may shed some light on the reason the warrant was never introduced.

Testimony revealed that although a large amount of money was seized the alleged warrant contained nothing in its contents about money. When questioned about this an agent said he did not know why money was not listed.

The search of the premises lasted at least one hour and 45 minutes and after this time the agents found some money. It was not on the petitioners' person, needless to say, but on the person of the wife of a co-indictee and also stuffed in a couch belonging to a co-indictee.

This in real effect turned into a "general warrant", albeit a missing one. The opportunity to search was taken and after getting a carte blanche approach to do so the agents rummaged around until they found something they assumed to be incriminating. This behavior and practice cannot be tolerated in a free society. *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971); *Johnson v. United States*, 333 U.S. 10, 68 S. Ct. 367, 92 L. Ed. 436 (1948).

The money purported to be the money used in the purchase of cocaine from persons other than the petitioners, was not listed as an object of the alleged search warrant. If a proper warrant had been obtained this item surely would have been included since, according to the testimony of the agents, it was their money.

The Supreme Court of Mississippi in a decision relating to descriptions of property in a warrant stated that "stolen property" was utterly void. *Conn v. Mississippi*, 170 So. 2d 20 (1964). Assuming what can be reasonably gathered from the record even such a bogus description as "stolen property" is absent from the

warrant here. There is a total absence of the seized items here.

Even an attempt to justify the search on one of the exceptions to the warrant requirement was not even attempted since it of course would be ludicrous based on the facts.

Review by this Court is therefore required in order to determine whether the failure of the Honorable Supreme Court of Mississippi to properly suppress the evidence of the illegal search deprived the petitioners of their Fourth and Fourteenth Amendment Rights.

When the petitioners appealed the decision of the trial court to the Supreme Court of Mississippi that Honorable Court declined to answer these issues in its affirmation of the trial court's actions. Petitioners would respectfully show that this in itself was a violation of due process of law and the Honorable Supreme Court of Mississippi refused and has yet to address the issues presented that would be dispositive of this cause. Although, the petitioners have properly, fully and diligently forwarded their complaints in a detailed, timely and legally sufficient manner, they have yet to have these issues examined and addressed by an appellate court. The petitioners therefore ask this Honorable Court to grant the petition for Certiorari and upon such grant to fully and completely address the Constitutional issues involved.

CONCLUSION

For the foregoing reasons, the petitioners would respectfully show that their writ for certiorari should be granted.

Respectfully submitted,

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COUNSEL FOR
PETITIONERS

CERTIFICATE OF SERVICE

I, Fielding L. Wright, Jr., hereby certify that I have this the 18 day of April, A.D., 1979, mailed first class, postage prepaid, 3 copies of the foregoing Petition for a Writ of Certiorari to A. F. Summer, Attorney General, State of Mississippi, Post Office Box 220, Jackson, Mississippi and Wayne Snuggs, Special Assistant Attorney General, State of Mississippi, Post Office Box 220, Jackson, Mississippi.

FIELDING L. WRIGHT, JR.

COUNSEL FOR
PETITIONERS

APPENDIX A

Debbie L. SIMPSON and
Charles Alexander

versus

STATE of Mississippi.

No. 50853.

Supreme Court of Mississippi.

Jan. 17, 1979.

Rehearing Denied Feb. 7, 1979.

Before PATTERSON, C. J., and SUGG and BOWLING, JJ.

SUGG, Justice, for the Court:

This is an appeal from the Circuit Court of Jackson County wherein defendants were convicted of distribution of a controlled substance and sentenced to twenty (20) years in the Mississippi Department of Corrections, and to pay a fine of $10,000 each. Defendants waived their right to trial by jury and appeared before the Hon. Darwin M. Maples, serving as the trier of fact.

Agent Don Richards of the Mississippi Bureau of Narcotics infiltrated a ring of cocaine dealers in the Jackson County area. On January 27, 1977, Frank Rogers notified Agent Richards that he had received a shipment of cocaine that the agent had agreed to buy. A meeting was set for 5:00 o'clock p.m. the next day, January 28, in Rogers' apartment in Gautier, Mississippi. On the 28th, Agent Richards met Frank Rogers and William (Bill) Rogers at Frank's apartment in Gautier. At the apartment, Bill Rogers exhibited a blue makeup pouch which contained approximately two ounces of cocaine. Agent Richards took the two men back to Moss Point, Mississippi where Agent Fred McDonald was waiting in a motel. The agents checked the two ounces of cocaine and inquired about the remainder of the eight ounces they had agreed to purchase. Bill Rogers advised them that his supplier desired to see if they had the money, whereupon the agents gave Bill Rogers $3,500 for the two ounces, and agreed for him to obtain the remaining six ounces from his supplier.

Frank Rogers and Agent McDonald remained in the motel while Agent Richards drove Bill Rogers to Gautier to pick up his motorcycle. On the way they stopped for Bill to call his supplier. Agent Richards then left Bill in Gautier and returned to the motel. Prior to Agent Richards' return, Agent McDonald learned from Frank that their supplier for the cocaine was from the Mobile area. However, no names were revealed.

Bill Rogers returned at approximately 6:55 o'clock p.m. with the remaining six ounces of cocaine. The transaction was completed and the brothers placed under arrest. During interrogation, Frank Rogers advised Agent Richards that the cocaine was being sold for another party and that they were waiting for the money at Bill's house in Moss Point. Frank did not know the address, but drove with the agents to Bill's house and pointed it out. At the residence, the agents observed a burgundy Grand Prix with an Alabama license plate.

At approximately 10:00 o'clock p.m. that evening the agents entered Bill Rogers' residence and recovered the $3,500 in the official state funds that were used earlier that evening to purchase the two ounces of cocaine. Subsequent to recovery of the money the defendants, Debbie Simpson and Charles Alexander, were arrested and charged with distribution of a controlled substance.

The defendants' first three assignments of error attack the validity of the search of Bill Rogers' residence and the evidence obtained therein. The defendants contend that the narcotic agents initiated an illegal search of Bill Rogers' residence and obtained evidence, namely, money which was tainted by the illegal search. The money was not introduced into evidence, but defense counsel, on cross-examination of state's witnesses Frank Rogers and Don Richards, elicited testimony about the search of the residence and the

seizure of the money which was used to purchase the cocaine. The general rule is that a defendant cannot complain of the evidence which he himself brings out. *Stone v. State,* 210 Miss. 218, 49 So.2d 263 (1950). It was held in *Fondren v. State,* 253 Miss. 241, 175 So.2d 628 (1965) that the rule applies to evidence, introduced by a defendant, that would be inadmissible if offered by the state because of an illegal search. The state did not rely on the fruits of the search to prove its case, but presented evidence of the guilt of defendants independent of the search.

Defendants' fourth assignment of error is that the judgment of guilt was against the overwhelming weight of the evidence. In support of this assignment, the defendants argue that the testimony of the accomplices was substantially impeached; therefore, it was not sufficient to support the judgment of guilt. The prosecution's case was based primarily on testimony of the accomplices of the defendants, Frank and Bill Rogers. Both Frank and Bill Rogers stated that they were to sell the cocaine for the defendants and receive $200 per ounce. We held in *Black v. State,* 336 So.2d 1302 (Miss.1976), that the uncorroborated testimony of an accomplice will support a verdict of guilty. However, an accomplice's testimony will be viewed with great caution and suspicion and must be reasonable and not improbable or self contradictory, or substantially impeached. The accomplice's testimony in this case is sufficient to withstand this test. We have held:

> In reviewing the sufficiency of the evidence to support the verdict, this Court must accept as having been established all that was proved by the evidence, as well as all that such evidence reasonably tended to prove, together with all reasonable inferences to be drawn therefrom, favorable to the theory of the prosecution. [*Carroll v. State,* 196 So.2d 878, 883 (Miss.1967)].

The evidence was sufficient to sustain the judgment of the circuit judge.

AFFIRMED.

PATTERSON, C. J., SMITH and ROBERTSON, P. JJ., and WALKER, BROOM, LEE, BOWLING and COFER, JJ., concur.

APPENDIX B

DEBBIE L. SIMPSON AND
CHARLES ALEXANDER

versus #50,853

STATE OF MISSISSIPPI

This cause having been submitted at a former day of this Term on the record herein from the Circuit Court

of Jackson County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the Judgment of said Circuit Court rendered in this cause on the 18th day of October, 1977 — a conviction of DISTRIBUTION OF A CONTROLLED SUBSTANCE and a sentence to serve a term of TWENTY (20) YEARS EACH in the custody of the Mississippi Department of Corrections and to pay a Fine of $10,000.00 Each — be and the same is hereby affirmed. It is further ordered and adjudged that the appellants do pay all of the costs of this appeal to be taxed for which let proper process issue.

WEDNESDAY, JANUARY 17, 1979,
COURT SITTING

ATTEST
A True Copy
This the 2nd day of April 1979
JULIA H. KENDRICK, CLERK
SUPREME COURT OF MISSISSIPPI
/s/ SHEILA PREWITT

APPENDIX C

DEBBIE SIMPSON AND
CHARLES ALEXANDER

versus #50,853

STATE OF MISSISSIPPI

This cause this day came on to be heard on Petition for Rehearing and this Court having sufficiently examined and considered the same en banc and being of the opinion that the same should be denied doth order that said Petition be and the same is hereby denied.

WEDNESDAY, FEBRUARY 7, 1979,
COURT SITTING

ATTEST
A True Copy
This the 2nd day of April 1979
JULIA H. KENDRICK, CLERK
SUPREME COURT OF MISSISSIPPI
/s/ SHEILA PREWITT